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C O N F I D E N T I A L SECTION 01 OF 02 ISTANBUL 000611

SIPDIS

E.O. 12958: DECL: 11/24/2018
TAGS: PHUM PREL TU
SUBJECT: NO QUICK END IN SIGHT FOR ERGENEKON TRIAL

REF: A. ANKARA 2041
 1B. ISTANBUL 505
 1C. ISTANBUL 380

Classified By: CONSUL GENERAL SHARON A. WIENER FOR REASONS 1.4(B,D)

11. (C) Summary: Because of the peculiarities of the Turkish judicial system, the Ergenekon trial of 85 defendants suspected of plotting to overthrow the Turkish state is expected to last at least a year, and perhaps much longer.
End Summary.

12. (U) We recently interviewed three prominent lawyers who have been following the Ergenekon case including: Tugrul Ansay, former Dean of Koc University Law School; Muammer Aydin, president of the Istanbul Bar Association; and Ergin Cinmen, human rights lawyer. All said they expect the trial to be quite lengthy, even by Turkish standards, but reasonably fair.

14. (U) The trial commenced on October 3. It is being conducted in a makeshift courtroom at the Silivri prison complex near Istanbul, which is inadequate to hold all of the defendants, their attorneys and families, and press representatives. In an attempt to ease the overcrowding, early in the case the court issued an order directing that the 47 detained defendants be tried separately from the 39 who are free on bail. That order was quickly rescinded when various defendants argued that its effect would be to deny one group of defendants the right to witness testimony given by the other group. Reportedly, Justice Minister Sahin has now directed the construction of a new mixed-use facility, that would serve as a courtroom during the week and a sports

hall on weekends. (Comment: It is some measure of the anticipated length of the trial that the construction of an entirely new facility while the trial is ongoing could be considered a plausible solution to the problem of overcrowding. End Comment.)

¶5. (U) On the third day of the trial, prosecutors began an oral recitation of the 2500 page indictment, which required nine days of hearings. On November 12, examination of the defendants began.

¶6. (U) Turkey's judicial system is "Napoleonic" or "Continental" in nature. In Turkey (as is typical in Continental Law countries), juries are not utilized; rather, a three-judge panel decides both the law and the facts. Accordingly, cases normally do not proceed day-to-day. Indeed, said Cinmen, Turkey's criminal procedure code requires a court to hold only one session per month, which may last only a few minutes.

-- In Turkey, the Court reporter normally does not make a simultaneous and verbatim transcript of testimony; rather, the judge will periodically stop the proceedings in order to dictate to the reporter a summary of what was said.

-- While Turkey recognizes a defendant's right against self-incrimination, a negative inference can be drawn from a defendant's failure to testify. Accordingly, Cinmen said, he and most other defense attorneys normally have their clients testify, since otherwise the court will conclude that the defendant is hiding something. Cinmen thinks that the Ergenekon defendants will similarly choose to testify, and at great length, using the opportunity to deliver political speeches.

-- The Turkish judicial system permits testimony by "secret" witnesses, whose names are not divulged to defense attorneys. (However, said Cinmen, no conviction can be based solely upon the testimony of a secret witness.)

¶7. (U) As a result, in Turkey the average length of a criminal trial is about one year, according to Cinmen. The Ergenekon trial, with its extraordinarily long indictment and large number of defendants, is expected to take much longer than the average Turkish criminal trial. In order to reduce its length, Cinmen said a number of unusual procedures have been put in place. First, the judges and prosecutors have all been relieved of other responsibilities, so that they can concentrate on this case alone. Second, the proceedings are being electronically recorded. Finally, the case is to proceed on a day-to-day basis. Thus, said Cinmen, although the case will involve much more courtroom time than the average case, it could be concluded within the normal one year period.

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¶8. (U) Aydin is not as optimistic. He thinks it would neither be proper nor possible for the case to go day by day, as it would place too much pressure on the court and litigants. (Silivri is located some 40 miles from downtown Istanbul, where most of the attorneys maintain their offices.) And, in fact, since the trial began, hearings have been held 2-3 times per week, a decent pace for a Turkish criminal trial, but one which implies that it will take substantially longer than a year to conclude.

¶9. (U) The court will declare its verdict within a week or two of the end of the trial, and sometime thereafter submit a written explanation. An appeal must be lodged within seven days of the verdict. A guilty verdict can be reached only if the judge has a "certain conviction" of guilt which, according to Cinmen, judges interpret as requiring 100 percent certainty. A conviction does not require unanimity among the judges, and can be based on a majority vote.

¶10. (C) The three attorneys conceded that Turkey's judiciary views its primary task to be the protection of the state,

rather than the even-handed administration of justice. Cinmen acknowledged that Turkish judges often are seen as pro-prosecution, and that this calls into question their independence. However, he noted that acquittals do occur, and expressed confidence that in the Ergenekon trial the rights of the defendants are being observed. Our other interlocutors similarly predicted that justice would be done. Aydin did acknowledge, however, that if political pressure is put on the judges (a possibility he would not discount), he does not expect they would be able to resist, nor does he expect them to "do the right thing" and resign.

WIENER